

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RP/24/0962

**RE: Property known as 48 Brown Street, Carluke ML8 5DT
("The Property")**

The Parties:-

**Michelle Clark, 48 Brown Street, Carluke ML8 5DY
("the Tenant")**

**Noon Investment Homes Limited (Company number SC330168), 32 Douglas
Street, Carluke ML8 5BJ
("the Landlords")**

Decision

The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal'), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the written and verbal representations by the Third-Party and the inspection, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Tribunal consisted of:

Rory A.B. Cowan – Legal Member

Nick Allan – Surveyor/Ordinary Member

Background

- 1) By application dated 27 February 2024 the Tenant applied to the First-tier tribunal: Housing and Property Chamber for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) and Section

19B(4) of the Housing (Scotland) Act 2006 (“the 2006 Act”) and section 86(1)(ga) of the Housing (Scotland) Act 1987.

- 2) The Application stated that the Tenant considered the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that:-
 - a) The electrics in the Property had not been inspected and that, in particular, the lights within the living room did not function safely;
 - b) There was mold in the hall, the carpet was wet and that water “runs down the wall”.
 - c) Following the removal of a “fire” from the living room a hole had been left in the living room floor;
 - d) There were issues with the plumbing within the Property to the extent that the Tenant was “unable to take a bath” due to leaks that had affected the downstairs neighbour’s property.
 - e) The kitchen within the Property was “incomplete”;
 - f) The carpets within the Property were “threadbare”; and
 - g) There was an issue with the heating within the Property in that it could not be controlled.
- 3) Following receipt of the Application, a Direction was issued to the Landlords to provide a copy of the current Electrical Installation Condition Report, Gas Safety Certificate for the Property along with a copy of the tenancy agreement between the Landlords and the Tenant. By email dated 15 March 2024 the Landlords supplied the items requested by the Direction.
- 4) By letter dated 14 April 2024 the President of the Housing and Property Chamber intimated a decision to refer the application under Section 22 (1) of the 2006 Act to a tribunal.
- 5) The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon the Landlord and the Third-Party.
- 6) Following service of the Notice of Referral, written representations were received from the Landlords as well as further representations by the Tenant. A large amount of material was provided by both parties of which a significant proportion was aimed at highlighting past grievances and disputes that were not relevant to the matters this Tribunal required to address and determine.
- 7) The Tribunal inspected the Property on the morning of 24 May 2024. The tenant was present along with her mother Rosanna Clark and provided access. The Landlords were represented by a Steven Noon, a Director of the Landlords.
- 8) Following the inspection of the Property, the tribunal held a hearing on 24 May 2024 at Brandon Gate, Leechlea Road, Hamilton ML3 6AU. The Landlords were

again represented by Mr Noon, who attended with two supporters Kiera and Caroline Noon. The Tenant appeared and represented herself and her mother Rosanna Clark attended with her as a supporter.

The Hearing

9) I was clear from the terms of the Application, the various written representations and further information submitted by both parties that the relationship between the Tenant and the Landlords had broken down and the Hearing was likely to be fractious. The Tribunal set out ground rules regarding behaviour prior to hearing the parties on their respective positions and made it clear that there should be no interruptions, talking over each other and that each party would get their chance to speak and state their position. It was also explained that, whilst there appeared to be wider disputes between the parties, the issue for the Tribunal at the Hearing was whether or not the Property met the required standards of repair as at the date of the Inspection and Hearing. The parties were asked to confine submissions to what was relevant to that issue and not to stray into wider issues that bore no direct relevance to the enquiries the Tribunal required to make. Notwithstanding these ground rules and regular reminders of same, the Hearing was beset with difficulties with disruptive behaviour by the Tenant in particular. She consistently interrupted the Landlords' representative, talked over him and regularly strayed into areas of irrelevancies. Breaks were given to allow the Tenant to compose herself and, at one point, one of the supporters for the Landlords' representative required to leave the Hearing as a result of the poor behaviour of the Tenant and did not return for the remainder of the Hearing. Nonetheless, the Tribunal were able to conclude the Hearing. There also a few issues of alleged disrepair that were mentioned in the Application, but which there had been no prior notification of to the Landlords. As such, the Tribunal was unable to consider them for the purpose of whether a Repairing Standard Enforcement Order (RSEO) should be made. These are detailed in the following paragraphs.

10) The decisions at the Hearing were as follows:

The electrics

The Tenant stated that there were issues with the electrical supply within the Property and, in particular, the living room. The Tenant stated that the overhead lights in the living room kept "blowing" bulbs, that she had received an electric shock from the sockets and that various electrical items had been damaged as a result (televisions and laptop computers). She claimed that the Electrical Installation Condition Report (EICR) had not been completed properly and that the electrical supply within the living room was still not in working order. It had been noted at inspection that the overhead lights were not working, and the Tenant claimed she had replaced the bulbs on or around 14 February 2024, but that had not changed anything. In response Mr Noon pointed to the EICR dated 10 January 2024 which had been carried out at the Property and which described the installation as "satisfactory". He mentioned that an electrician had been sent by the Landlords to the Property and had looked at the living room lights. The suggestion had been that the issue may be that the bulbs needed replaced and that the Tenant should try that. It was suggested that the Tenant had expected the

electrician to change the light bulbs for her. Mr Noon did fairly concede that, as at the date of the Hearing, he did not know if the lights were working or not. He disputed the Tenant's suggestions regarding the electrical sockets and explained she could not have received a "shock" as the supply was "RCD protected".

Damp and Mould

Whilst this appeared in the Application, the Tenant acknowledged that there had been no written notification of this issue of disrepair to the Landlords. Whilst it was noted that there was an issue with damp and mould in the Property within the stairwell leading up to the main part of the Property (in particular the half landing and underneath the window at the top of the stairs), as no formal notification of same had been made, the Tribunal could not consider same for the purpose of the Hearing and in relation to a RSEO. That said, as discussed with Mr Noon, it was in the interests of the Landlords to investigate this issue and have it resolved to prevent further damage being caused to the Property. Although this would not be the cause of the damp and mould, it was noted that the "trickle vents" in the windows to the Property (including in the said stairwell) were closed which would increase the amount of moisture through condensation within the Property.

The Fire

The Tenant indicated that there had been a gas fire in the living room when she moved into the Property. There had been an issue with it, and it had been "condemned" and removed. She complained that it had not been replaced and there was a hole left in the flooring where it had been which had been left by the Landlords. Mr Noon accepted that there had been a gas appliance in the living room when the Tenant moved in, but that it was a gas fire with a boiler behind it. He stated that the Landlords had supplied and fitted a new boiler but that it had been moved to the kitchen. He accepted the flooring had not been replaced leaving an uncovered area in the living room. The Tenant accepted that a new boiler had been fitted in the kitchen, but she did not realise the appliance in the living room had been the Property's boiler.

Plumbing

The Tenant stated that the overflow on the bath in the bathroom to the Property is not connected to the drain, meaning that if water goes into the overflow, then it will escape and can flood the property below. Mr Noon disputed the Tenant's suggestion and stated that he has sent 3 plumbers to the Property to investigate, and none had found a problem. He referred to Appendix 1.1 he had lodged with his response which he claimed were text messages between him and a plumber that had attended the Property. The Tenant interjected and referred to a "pump" that had been supplied but not fitted to the bath, something that had been noted at inspection.

Kitchen

The Tenant referred to the cupboard where the fridge had been situated that was built above a radiator. It had a missing door. She also mentioned that no

kickboards had been fitted and there was a missing drawer end. She claimed that a glass shelf within one of the above countertop kitchen units was not safe, there were missing seals around kitchen units and the worktop was split. Mr Noon accepted that some work was still required to the kitchen to finish it, but that as a result of the breakdown in the relationship with the Tenant, they had not been able to finish the kitchen. He stated that all the missing parts were within the Property to be fitted. In relation to the radiator, he acknowledged that it was located under the fridge but there was no issue with this, and that the unit had been vented at floor level to allow the heat to circulate back into the kitchen.

Carpets

The Tenant stated that the carpets in the internal hallway within the Property and stairwell were worn and were not in a reasonable condition. She stated that they had not been in a reasonable condition when she moved in. In response Mr Noon indicated that the carpets were the ones that were in the Property when it was bought in 2018. He could therefore not say how old they were or how worn they were at that point. He suggested that there may be increased wear and tear due to the Tenant having dogs, albeit he conceded she had been given permission to have at least one dog. There was some argument about whether permission had been given for one or two dogs, but that was not material as Mr Noon indicated that there was no issue with the Tenant having the two dogs. It was stated that the Tenant had paid an increased deposit as a result.

Heating

The Tenant complained that there was no control unit to allow her to control the central heating. It was also noted at inspection that some control valves were missing from radiators within the Property. However, this was another aspect of the Application where no prior notification had been given to the Landlords and, as such, the Tribunal could not consider same.

Summary of the Issues

- 11) The issues to be determined are whether:
- a) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
 - b) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
 - c) The Property meets the Tolerable Standard, being one that the electrical supply complies with relevant requirements such that it is safe to use.

Findings in fact and law

- 12) The Tribunal finds the following facts to be established:-

- a) That there is tenancy for the purposes of section 14(1) of the 2006 Act.
- b) That the tenancy commenced on or around 5 August 2018.
- c) Noon Investment Homes Limited are the heritable proprietors of the subjects at 48 Brown Street, Carlisle ML8 5DY and hold the landlord's interest in the tenancy for same with the tenant Michelle Clark.
- d) That the Property is a former local authority upper floor self-contained one bed roomed flat within a block of 4 such flats within a two-story building constructed around 1940. The roof of the block is of pitched and hipped configuration finished with concrete tiles whilst outer walls are of brick construction with rough-cast external finish. Windows and external doors appear to be modern replacements.
- e) That the Property has a gas-fired boiler located within the kitchen to the Property.
- f) That, whilst there is a current Electrical Installation Condition Report for the Property, the overhead lights within the living room were inoperable at the time of inspection despite replacement bulbs being fitted.
- g) Following removal of the former gas boiler in the living room, there is an exposed former hearth with no floor coverings over same.
- h) That the carpets within the internal hallway are threadbare, poorly fitted and "life expired".
- i) That the kitchen installation within the Property has not been completed. The "kick boards" within same have not been fitted and/unit there are missing cupboard/unit doors. The sink overflow for the kitchen sink is not connected and drains instead into a plastic bucket.

Reasons for the decision

- 13) The Tribunal was not satisfied that the installations in the Property for the supply of electricity or and for sanitation were in a reasonable state of repair and in a proper working order or that the electrical supply complies with relevant requirements such that it is safe to use for the following reasons:
- a) Whilst there was an EICR for the Property based on the evidence before it, it appeared to the Tribunal that the lights within the living room of the Property may not be in a reasonable state of repair. The Tenant stated that she had replaced the bulbs in the light fitting and it still did not work.
 - b) The Tenant stated that the overflow for the bath within the bathroom was not connected. On inspection, it was noted that a new overflow pump for the bath was present within the bathroom but had not been installed.

14) The Tribunal was not satisfied that the fixtures and fittings provided by the Landlords were in a reasonable state of repair and in proper working order for the following reasons:

a) It was clear that when the former boiler was removed from the living room that the floor was left as it was and no attempt was made to cover the exposed hearth that the gas fire had previously been sitting on. This left an unsightly patch in the floor space which was not covered by suitable floor coverings. This was acknowledged by the Landlords' representative.

b) The carpet in the internal hallway is threadbare and heavily worn. It has become loose and screws protrude from the floorplate where the carpet meets the bedroom. Whilst the carpet in the stairwell leading up to the Property is showing signs of wear, it is intact and still in a reasonable state of repair.

c) The kitchen within the Property, whilst relatively new is unfinished, something that was acknowledged by the Landlords' representative. Unit doors were missing and the kickboards for the kitchen units had not been fitted. Further, the overflow for the kitchen sink is not connected to the drain and empties into a plastic bucket.

Observations

15) Whilst the Tribunal was unable to take the complaint regarding damp and mould within the Property forward due to a lack of prior notification, it was noted that the Property was affected by damp and mould in the stairwell leading up to the main part of the Property and had the Tribunal been able to determine the matter the Tribunal would have found the Landlords in breach of their obligations in that regard.

16) Whilst the Tribunal was unable to take the complaint regarding the lack of any heating system controls forward due to a lack of prior notification, it was noted that the Property's heating system did not have a control unit (it was supposed to have a portable thermostat) and some of the radiators had missing control valves and, had they been able to determine the matter the Tribunal would have found the Landlords in breach of their obligations in that regard.

17) Whilst it was not a matter of complaint to be dealt with in the Application, it was noted that the CO detector was inoperable due to a lack of batteries.

18) Whilst it is not a matter of complaint to be dealt with by this Application, it was noted that the ceiling light within the bathroom was not suitable for use in a bathroom as it is not a sealed unit.

19) Whilst unusual, the Tribunal are satisfied that the location of the fridge unit within a cupboard in the kitchen, and its close proximity to a source of heat in a confined space, does not give rise to any issues in terms of the requirements of

the Building (Scotland) Act 2003. However, parties may wish to consider the manufacturers operating requirements for the fridge unit.

- 20) Whilst the RSEO sets out what the Tribunal considers is a reasonable time frame for the required works to be completed, it is noted in the application paperwork that there may have been issues with gaining access previously. Both parties are reminded that they should work with each other to allow reasonable access to have any repairs effect. If not, then it is open to the Landlords to seek a variation in the RSEO to allow more time for works to be completed.

Decision

- 21) The Tribunal accordingly determined that the Landlord has failed to comply with his duties imposed by Section 14 (1)(b) of the 2006 Act.
- 22) The Tribunal therefore decided to make a Repairing Standard Enforcement Order (RSEO) as required by section 24(1).
- 23) The decision of the tribunal was unanimous.
- 24) The Surveyor/Ordinary Member of the Tribunal took several photographs which form the schedule attached to this decision.

Right of Appeal

- 25) In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**
- 26) Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Signed- R Cowan

Date 2 July 2024.....

Chair Person